1949. **File No.** Agrl. Debt Relief II/49 (R)

Legal Department

B **BRANCH**

Subject:—

Rules under the Bombay Agricultural Debtors Relief Act 1947

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9-7

File No. Agrl Debt Relief II/49 (R)

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In place of the R.D. draft notifications at pages 73 and 77 ante, revised drafts are sent herewith.

Amendments of B.A.D.R. Rules, 1947.

Amendment No. (1). The proposed amdment is necessary Rule 3 of the Bombay Agricultural Debtors Relief Rules, 1941, which are now superseded prescribed the other purposes, advancing of loans for which was financing of crops under the repealed Act of 1939. The rule was amended and more liberal in 1942 The R.D. draft does not follow the rule as amended. The draft has therefore been amended and brought in line with the old rule as amended.

Amendment No. (2). It has been revised from the drafting point of rule and restricted to the inquiries under the rule in question.

Amendment No (3). It appears from the Inspector General's letter dated 17.1.1949 at p. 46 that he has not understood the effect of Chapter II-A providing for registration of awards inserted in the B.A.D.R. Act, 1947 by Bom LXX of 1948. Registration of documents is a concurrent subject falling under entry 8 in List III in the Seventh Schedule to the Government of India Act, 1935. The Inspector General of Registration has not realised that an enactment can be amended not only by the insertion of an amending provision in the Act itself but also by a separate enactment. In this particular case the latter method has been followed and provisions relating to registration of documents need not be incorporated in the Indian Registration Act, 1908 itself. Chapter II-A of the B.A.D.R. Act contains self contained provisions for registration of all awards made under the Act of 1947 as well as those made under the repealed Act of 1939 and is not restricted to awards made by the Court under section 46B as presumed by the Inspector General of Registration.

The provisions of chapter II-A which are enacted later would override the provisions of the Registration Act. No amendment of the Registration Act or the rules made thereunder as suggested by the Inspector General are necessary. As required by section 46A all registration offices will have to maintain separate book called "Registered of Debt Adjustments" and a separate Index relating thereto. The draft amendments to the B.A.D.R. Rules prepared by R.D. as revised would meet the object in view.

As regards para. 6 of the Inspector General's letter at p.47, in most cases the registration office within whose jurisdiction the Court is situated and the property of the debtor is situated will be the same. But for cases where there may be different registration offices, the Inspector General may issue executive instructions asking the form registration office to inform the registration office concerned about the institution of the appeal.

Draft notification under section 78 of the Registation Act.

The draft notification has been ruised to include awards under the repealed Act.

S. D.

Additional Secretary to Government.

U.O. to R.D. No. 4057, dated the 15th April 1949.

VGP.

4-6-55.

Legal Department.

The proposal in the linked case is to exempt awards made under the Bombay Agricultural Debtors Relief Act, 1947 from payment of registration fees. But such exemption would not cover the copying charges, if any, for preparing certified copies of awards required charges to be sent by the Court under section 46B of the said Act for registration. A rule for the purpose can be made under the B.A.D.R. Act, 1947.

S. R.

Additional Secretary to Government.

U.R.to R.D. No., 4097 dated the 14th April 1949.

VGP.
4-6-56.

Legal Department.

Paragraph 2 of Inspector General of Registration's letter dated 27-5-1949 at page 125 ante. The view taken by the Inspector General of Registration that the copies of awards are to be filled in the registration book as they are received from the Court, is correct.

2. Paragraph 3 at page 125. Please see remarks on point (1) in R.D. file 4684/45/28352 sent as a linked case.

S. D.

Additional Secretary to Government.

U.R. to R.D. No. 9134, dated the 12th August 1949.

VGP.

4-6-56

Point No 1.- Section 46B of the Bombay Agricultural Debtors' Relief Act, 1947, provides that it is the duty of the Court to send awards for Registration to the Registering office. Proviso (b) to section 56 provides that awards made under the Repealed Act shall be deemed to be made under the Act of 1947. Section 46B also makes it clear that the awards made under the Repealed Act whether registered or not shall be registered under Chapter II-A. In view of these clear and express provisions it is not understood how double felt by the Inspector General of Registration can at all arise. As pointed out in R.D. note, the Act of 1948 is merely an amending Act and is not a separate Act. There can therefore be only two kinds of awards:- (1) under the Repealed Act and (2) under the Act of 1947. There cannot be a third kind of award made under the amending Act. The view taken in R.D. note is correct.

Point No. 2.- It is the duty of the Court under section 46B to send the copies of awards for registration. Section 46B makes it clear that to the extent provided in Chapter II-A of the Bombay Agricultural Debtors Relief Act, the provisions of the IndianRegistration Act are amended. The Registration Office gets Jurisdiction to register the awards after the procedure prescribed in chapter II-A has been followed. Chapter II-A does not leave it to the partiesto present the award for registration. The view taken in R.D. note is correct.

Point No 3.- As pointed out above, it is the duty of the Court to send the award for registration. No question of the payment of court fees arises. The view taken in R.D. note is correct.

Point No. 4. Instructions may issue to the Registration Office to accept the awards forregistration although they are not accompanied by a memorandum until the form of the memorandum is prescribed/ After the form is Prescribed the awards will have to be accompanied by memoranda.

VGP.

Point No. 5.- The provisions of the Indian Registration Act are to be apply to the registration of awards under the Bombay Agricultural Debtors Relief Act, 1947, mutatis Mutandis. The words mutatis Mutandis in section 46B of the Act now that the provisions of the Indian Registration Act are to be followed in every detail. It is true that section 23 of the Indian Registration Act provides a period of four months for the presentation of documents. But that Act itself contains provisions in sections 23A, 24, 25 and 26 in which this period may be relaxed. Moreover, under section 46B of the Agricultural Debtors Relief Act, it is the duty of the Court to send the copies of the awards for registration. If there is delay in sending such copies on the part of the Court, such delay being an act of the Court cannot projudice any person. The general principle of law is Actus curiar neminem gravabit; an act of the Court shall prejudice no man (broom's Legal Maxims, p. 73).

Point No 6.- In view of the decision given on the second point, this point does not survive.

Point No 7.- If any awards are presented for registration by parties themselves before the amending Act of 1948 came into force, the procedure laid down in the Indian Registration Act may be followed.

~~S.D.~~ Sd.

Additional Secretary to Government

J.R. to R.D. No. 9133, dated the 12th August 1949.

VGP.

4-6-56.

Legal Department.

A revised draft notification is sent herewith.

S.D. Sd.

Additional Secretary to Government.

U.R. to Development Deptt. No. 14237, dated the 8th December 1949.

VGP.

4-6-56.